

## Plaintiff's Exhibit "D"

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2 Volume: I

3 Pages: 1-71

4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF MASSACHUSETTS

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6 LAYLA KIANI,  
7 Plaintiff,  
8 v.  
9 TRUSTEES OF BOSTON UNIVERSITY,  
10 Defendants.

----- X

11  
12 DEPOSITION OF WENDY K. MARINER  
13 Tuesday April 26, 2005, 10:20 a.m.  
14 Law Office of Ben Tariri  
15 343 Washington Street  
16 Newton, Massachusetts 02458  
17 -----Reporter: Toni F. Beckwith, RMR-----  
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21  
22 Toni F. Beckwith, Registered Merit Reporter  
23 50 Winsor Avenue  
24 Watertown, Massachusetts 02472  
Tel: 617.924.2731  
Fax: 617.924.9899

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1 APPEARANCES:  
2  
3 LAW OFFICE OF BEN TARIRI  
4 By Ben Tariri, Esquire  
5 343 Washington Street  
6 Newton, Massachusetts 02458  
7 Counsel for the Plaintiff  
8  
9 BOSTON UNIVERSITY  
10 OFFICE OF THE GENERAL COUNSEL  
11 By Lawrence S. Elswit, Esquire  
12 125 Bay State Road

13 Boston, Massachusetts 02215  
14 Counsel for the Defendants  
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1               I N D E X  
2 Deposition of: Direct Cross Redirect Recross  
3 WENDY K. MARINER  
4 By Mr. Tariri 4  
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11               E X H I B I T S  
12 No.                          Page  
13  
14 1 Document Entitled Charges  
15       in the Matter of Layla Kiani      29  
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4

1               P R O C E E D I N G S  
2       MR. TARIRI: Are you ready?  
3       MR. ELSWIT: Ready.  
4  
5       WENDY K. MARINER,  
6 having been satisfactorily identified by the

7 production of her driver's license, and duly  
8 sworn by the Notary Public, was examined and  
9 testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. TARIRI:

13 Q. Good morning. My name is Ben Tariri.  
14 I'm the attorney for the plaintiff Layla Kiani.  
15 This is a deposition of Professor Wendy Mariner.  
16 Today is April 26, 2005. Present in my office  
17 is Attorney Lawrence Elswit and Professor Wendy  
18 Mariner.

19 Professor Mariner, the understanding  
20 is that your attorney is welcome to object.  
21 Notwithstanding his objections, you are required  
22 to answer any questions regarding anything that  
23 transpires in this room. Is that  
24 understandable? Is that acceptable?

5

1 A. I take my lead from...

2 MR. ELSWIT: That's all right.

3 MR. TARIRI: I'm sorry. Did you want  
4 to say something?

5 MR. ELSWIT: No.

6 Q. Professor Mariner, would you spell  
7 your name, please.

8 A. First or last?

9 Q. Both.

10 A. Wendy is W E N D Y, Mariner is  
11 M A R I N E R.

12 Q. There is no middle initial?

13 A. I have a middle initial K.

14 Q. What do you do, Professor Mariner?

15 A. I beg your pardon?

16 Q. If I speak in too low a tone of voice,  
17 please let me know.

18 What do you do for a living?

19 A. I teach.

20 Q. What do you teach and where do you  
21 teach?

22 A. I teach at Boston University, and I  
23 teach courses in health law.

24 Q. How long have you been doing that?

6

1 A. At Boston University?  
2 Q. No, as a teacher. How long have you  
3 been a teacher?  
4 A. A long time. More than 20 years.  
5 Since about 1980, 1981.  
6 Q. So you've been teaching law since  
7 1981?  
8 A. Since about then, yes.  
9 Q. Where have you been teaching?  
10 A. I began teaching at Harvard Medical  
11 School.  
12 Q. What did you teach there?  
13 A. I taught health law issues in courses  
14 called Social Medicine in the Social Medicine  
15 Department.  
16 Q. When did you move on to a law school,  
17 any law school?  
18 A. Not until I got a joint appointment at  
19 Boston University Law School.  
20 Q. When was that?  
21 A. In the 1990s. I forget the year.  
22 Q. Would you say late 1990s or early  
23 1990s?  
24 A. I don't remember. I'd have to look it

1 up.  
2 Q. Are you a tenured professor?  
3 A. I'm a professor at Boston University  
4 School of Public Health. I have a joint  
5 appointment at Boston University School of  
6 Medicine and Boston University School of Law.  
7 The medical campus does not have  
8 tenure.  
9 Q. Again, I asked you, so are you tenured  
10 anywhere at the school?  
11 A. No.  
12 Q. How many courses do you teach at  
13 Boston University School of Law?  
14 A. One.  
15 Q. What is the name of that course?  
16 A. It's now called Health Insurance,  
17 Managed Care and the Law.  
18 Q. What was it called previously?  
19 A. Managed Care and the Law.  
20 Q. When did it change its name?

21 A. This year.  
22 Q. Do you know why?  
23 A. Because the course content covered  
24 health insurance and it seemed a better

8

1 description.  
2 Q. How often do you teach in a week?  
3 A. Once a week in the spring semester.  
4 Q. How many hours is your class?  
5 A. About two hours. If you're referring  
6 to the health insurance managed care class?  
7 Q. I am. Thank you. I'll be more  
8 specific.

9 How many students do you have in your  
10 class of Managed Care and the Law at Boston  
11 University School of Law.

12 A. It varies year to year.  
13 Q. How many students do you have this  
14 year as we speak?  
15 A. 24.  
16 Q. How many students did you have last  
17 year in the spring?  
18 A. I don't remember specifically.  
19 Q. Do you recall how many students you  
20 had in the spring of 2003?  
21 A. Not specifically.  
22 Q. Do you have an approximate number?  
23 A. I think it was somewhere between 10  
24 and 15; maybe 11 or 12. I don't recall

9

1 specifically.  
2 Q. Professor Mariner, do you know Layla  
3 Kiani? Have you heard of Layla Kiani?  
4 A. She was a student in my seminar.  
5 Q. Which year?  
6 A. 2003, I believe.  
7 Q. Was it in the spring of 2003?  
8 A. The course is always in the spring.  
9 Q. Your courses are always in the --  
10 A. That course.  
11 Q. What level students do you teach at  
12 the law school?  
13 A. I teach second- and third-year  
14 students in that course.

15 Q. Are you told if a student is a  
16 second-year student or third-year student?

17 A. I don't think so.

18 Q. Do you ever find out to see if the  
19 student is a third-year, 3L or 2L?

20 A. I usually don't need to.

21 Q. Because you already know?

22 A. No. It doesn't matter.

23 Q. Can you describe the setting of the  
24 class that you teach, that you currently teach?

10

1 What is the setting? Is it like a roundtable  
2 setting, or is it like a lecture setting?

3 A. This year?

4 Q. This year.

5 A. This year it's in a regular classroom  
6 with rows of desks and chairs.

7 Q. Where do you position yourself?

8 A. I'm sorry. I'm mistaken. We moved  
9 the desks and chairs to form a square.

10 Q. Can you describe where your position  
11 is in that square?

12 A. I usually stand or sit on one side of  
13 the square near the blackboard.

14 Q. Do you ever sit down?

15 A. Yes.

16 Q. If you could just very briefly  
17 elaborate on how you go about teaching in this  
18 class. You know, the actual -- I'm not  
19 concerned about the substantive matters, just  
20 procedurally, when you walk into the classroom,  
21 do you start talking? What do you do?

22 A. The teaching method depends on the day  
23 and the topic, so it varies. I usually  
24 introduce the topic and describe generally what

11

1 I want to talk about, then ask questions of  
2 students.

3 Q. How do you determine who to ask  
4 questions from?

5 A. Students usually volunteer. And if  
6 students don't volunteer, I call on them.

7 Q. So would it be fair to say that you  
8 ask a question and you wait for someone to raise

9 their hands or volunteer to answer without  
10 actually pointing at a student?

11 A. Usually students volunteer.

12 Q. To answer?

13 A. Yes.

14 Q. How do you ensure that all the  
15 students participate in such a transaction, in  
16 such an environment?

17 A. It's not always easy. I try to make  
18 sure to ask questions of students who have not  
19 volunteered.

20 Q. So would it be fair to say that you  
21 try to be evenhanded and make sure everyone is  
22 included in this interaction?

23 A. Like anyone, I try to make sure  
24 everyone gets to participate.

12

1 Q. If a student does not participate,  
2 what do you do?

3 A. If they don't participate when I call  
4 on them, I may encourage them after class.

5 Q. Do you have any handicapped students  
6 in your class this year that you know of?

7 A. Not that I'm aware of.

8 Q. When was the last time you had a  
9 handicapped student in your class?

10 A. It may have been in Layla's class.

11 Q. And it was Layla?

12 A. Well, it depends on what you mean by  
13 handicapped.

14 Q. I'm just asking you if you were aware  
15 of -- handicapped is a person who could be  
16 disabled for various reasons known or unknown to  
17 others; it may be visual and not be visual. So  
18 I'm asking you if you could visually determine  
19 if a person was handicapped by, you know, i.e.,  
20 seeing a wheelchair or crutches or a  
21 stenographer, you know, and the like.

22 A. I noticed that Layla was in a  
23 wheelchair, and another student had crutches and  
24 told me that he was undergoing treatment for

13

1 cancer.

2 Q. But was he handicapped?

3 MR. ELSWIT: Objection.

4 MR. TARIRI: Objection noted.

5 Q. I'm asking you if you saw any students  
6 who were handicapped by your standards?

7 A. I thought you asked if I saw anyone on  
8 crutches, and I did.

9 Q. Thank you. Yes, you did answer if  
10 there were anyone with crutches.

11 Now I'm asking if you saw any students  
12 who you believe were handicapped.

13 MR. ELSWIT: You're asking the witness  
14 to reach a conclusion of law, and I've been  
15 pretty patient with this line, as I was  
16 yesterday with Professor Kull. But I think  
17 we've about explored this to the extent I'm  
18 going to allow you.

19 MR. TARIRI: We haven't explored it  
20 with this witness at all.

21 MR. ELSWIT: We've explored it  
22 sufficiently. You asked her several questions  
23 that ask her to make a conclusion of law about  
24 students with disabilities. She's done that to

14

1 the best of her ability. Her judgment on  
2 whether or not a student with crutches  
3 undergoing chemotherapy is handicapped has no  
4 bearing whatsoever on this case.

5 MR. TARIRI: I object to your  
6 response, to your objection. I believe that I'm  
7 asking her to -- we're not looking for a  
8 conclusion of law from her. I'm asking her  
9 directly if she saw anybody who she believed was  
10 handicapped.

11 MR. ELSWIT: She answered. She told  
12 you that the plaintiff had an obvious disability  
13 and another student was on crutches and was  
14 undergoing treatment for cancer.

15 BY MR. TARIRI:

16 Q. Let's move on to the next question.  
17 Did you see anyone else who was handicapped in  
18 your class since you've been at BU Law School?

19 A. I don't recall seeing anyone with  
20 visible wheelchair or crutches or something like  
21 that --

22 Q. Thank you.

23 A. -- in my classes.

24 Q. That's what I meant, in your class.

15

1 Professor Mariner, what do you expect  
2 your students to do in your class other than  
3 attending the class?

4 A. It's in the course objectives. I  
5 expect them to read the assigned material,  
6 participate in class discussion, and write two  
7 original papers on assigned topics.

8 Q. These topics vary, I take it, from  
9 semester to semester?

10 A. Sometimes.

11 Q. How long are these papers required to  
12 be?

13 A. They're to be about 15 pages. They  
14 could be 14 or 16.

15 Q. Would that be each?

16 A. Yes.

17 Q. Would these papers be material that  
18 you talked about already in class?

19 A. It's difficult to answer that way.

20 Q. I'll try to be more clear. Are the  
21 papers relevant to the subject matter of the  
22 course?

23 A. Yes.

24 Q. Are the papers also relevant to the

16

1 books that you assign? Are they related to the  
2 books?

3 A. I don't always assign books. I assign  
4 articles and cases. And the papers require, the  
5 first paper requires students to analyze  
6 proposed statute in light of the materials and  
7 discussion in class.

8 Q. Have you published any articles  
9 yourself?

10 A. Yes.

11 Q. How many?

12 A. Lots.

13 Q. Do you use your own articles in your  
14 assignments?

15 A. Sometimes.

16 Q. Do all of your articles concern

17 healthcare and the law?

18 A. In a general sense they concern legal  
19 issues in health, yes.

20 Q. Back to your class. On a given day,  
21 on an average day, do you give lectures as well  
22 that students are required to follow and take  
23 notes?

24 A. I don't lecture in the typical sense

17

1 of a large first-year lecture class. I do often  
2 explain things that may not be apparent to  
3 students who ask questions. I may provide some  
4 background on a topic that I don't think  
5 students would know.

6 Q. Do your students take notes?

7 A. Yes. Some do; some may not.

8 Q. What happens to the ones that don't  
9 take notes?

10 A. Nothing.

11 Q. Do they pass the exam? You don't have  
12 to answer.

13 MR. ELSWIT: Objection.

14 MR. TARIRI: Strike that.

15 Q. Professor Mariner, I'm going to take  
16 you back to the year 2003, which is only two  
17 years ago. Do you recall the class of 2003?

18 A. Generally.

19 Q. Your class of 2003, how many students  
20 do you recall you had in your class?

21 A. I think you asked me that.

22 Q. I did.

23 A. Somewhere between 10 or 12. I can't  
24 quite remember exactly.

18

1 Q. Would that be considered a small  
2 class?

3 A. By whom?

4 Q. By your standards.

5 A. Some seminars are small. It's nice  
6 when there are a small number of students.

7 Q. What makes a class small, and what  
8 makes a class bigger?

9 A. I'm not following this.

10 Q. You testified earlier that this year's

11 class contains 24 students?  
12 A. Yes.  
13 Q. So it consists of 24 students, and the  
14 2003 class was 11. What do you think  
15 contributed to the size?  
16 A. I don't know. I'd like to think the  
17 popularity of the class.  
18 Q. So apparently it's more popular now.  
19 A. I don't know.  
20 Q. Do you recall any of the students in  
21 the class of 2003?  
22 A. Probably if you named them.  
23 Q. Or if you saw them?  
24 A. If I saw them, I would probably

19

1 recognize them. I don't always recall which  
2 year they were in class.  
3 Q. What do you do with the assignments  
4 that they turn in once they have finished the  
5 class, once they graduated from that class?  
6 A. It depends. I grade them.  
7 Q. I understand that. But what do you do  
8 subsequent to the grading once the school is  
9 over and the students are gone? Do you keep the  
10 papers? Do you hold onto the papers?  
11 A. I do.  
12 Q. For how long?  
13 A. Several years probably.  
14 Q. So would it be fair to say that you  
15 have all the papers from the class of 2003? And  
16 what I mean by that is a class that you taught  
17 in 2003 in the spring of 2003.  
18 A. I normally keep copies of papers.  
19 Q. Do you recall seeing Layla Kiani in  
20 your class?  
21 A. Yes.  
22 Q. When did you first see her?  
23 A. On the first day of class.  
24 Q. Did you know her before that?

20

1 A. No.  
2 Q. Had you heard of her before that?  
3 A. No.  
4 Q. When she came to your class, was she

5 in a wheelchair?

6 A. Yes.

7 Q. Did you talk to her on the first day  
8 of class?

9 A. I say hello to everyone.

10 Q. No, but did you talk to her  
11 individually?

12 A. I probably said hello, yes.

13 Q. I'm just asking you for what you  
14 remember. If you don't remember, of course  
15 that's perfectly acceptable.

16 Did you have any interactions with her  
17 in class from Day 1?

18 A. I may have asked her if she was  
19 comfortable at a particular spot beside the  
20 table.

21 Q. Do you recall that?

22 A. Not specifically.

23 Q. Do you recall if she was -- was she  
24 taking notes?

21

1 A. I don't remember specifically.

2 Q. Were the other students taking notes?

3 A. I don't pay attention to whether  
4 students take notes. That's their  
5 responsibility.

6 Q. Professor Mariner, was she a  
7 participant in the discussions that you referred  
8 to earlier?

9 A. In class discussion?

10 Q. In class discussion.

11 A. Oh, yes.

12 Q. Can you describe how she participated?

13 A. She often volunteered and offered  
14 opinions.

15 Q. How did you perceive her opinions to  
16 be? Were they positive contributions?

17 A. They were rarely about the legal  
18 issues we were discussing.

19 Q. What were they about?

20 A. Sometimes they were about her opinions  
21 about the way patients should be treated.

22 Q. How did she rate in class compared to  
23 the other students?

24 A. On what criteria?

22

1 Q. In terms of the comments she made.  
2 A. Not very well.  
3 Q. Can you elaborate further, please?  
4 A. I think I just explained. Her  
5 comments were rarely on point and rarely about  
6 the law and sometimes incorrect analyses of the  
7 law.  
8 Q. Did she seem to be "out of it"?  
9 A. No, not at all.  
10 Q. You said her comments were rarely on  
11 point and were rarely related to the subject  
12 matter?  
13 A. Well, perhaps you could explain what  
14 you mean by "out of it."  
15 Q. I'm just using the slang term. I'm  
16 sorry.  
17 Was she focused on the subject matter?  
18 A. She seemed to be paying attention to  
19 the discussion.  
20 Q. But was she focused on the subject  
21 matter?  
22 A. I don't know what her state of mind  
23 was. I can only judge her facial expressions  
24 and comments.

23

1 Q. Did you know that she suffered from  
2 cerebral palsy?  
3 A. No.  
4 Q. Did you ever ask her?  
5 A. No.  
6 Q. Did you have any conversations with  
7 her?  
8 A. Conversations?  
9 Q. Conversations.  
10 A. About class work in class, sometimes  
11 after class.  
12 Q. So you had conversations about the  
13 class subject matter?  
14 A. Yes.  
15 Q. In class and outside of the class?  
16 A. I invited her to come talk to me, but  
17 she only talked to me after class.  
18 Q. And what did she talk about?

19 A. In the classroom before she left.  
20 Q. Do you recall what she talked about?  
21 A. Not really.  
22 Q. Did you ever point out the fact that  
23 the comments she made were rarely on point?  
24 A. I pointed it out in her paper.

24

1 Q. No, to her personally?  
2 A. I may have. I don't remember  
3 specifically.  
4 Q. Were you concerned about her responses  
5 in class?  
6 A. Not really.  
7 Q. Professor Mariner, you just said that  
8 her comments were rarely on point or rarely  
9 relevant to the subject matter. Wouldn't that  
10 be a concern?  
11 MR. ELSWIT: Asked and answered.  
12 Q. Do you have any other students in  
13 class who also did not make sense?  
14 MR. ELSWIT: Objection. That's not  
15 what the witness said.  
16 Q. Did you have any other students in  
17 class who did not make comments which were on  
18 point?  
19 A. There are usually students who make  
20 comments that aren't on point.  
21 Q. That's true. I guess my question is,  
22 did you have any other students who consistently  
23 made comments that were not on point in that  
24 particular class?

25

1 A. I don't think anyone was consistently  
2 not on point.  
3 Q. What I mean by consistently, I don't  
4 mean all the time consistent, more than  
5 infrequently.  
6 A. I've had students like that.  
7 Q. I was referring to that particular  
8 class.  
9 A. I don't know if it was in that  
10 particular class.  
11 Q. Professor Mariner, you have been a  
12 professor since 1981, so that's a long time by

13 my standards. I've never been a professor.  
14 A. You're a young man.  
15 Q. Not really. Thank you.  
16 My question is: Do you form opinions  
17 about a student's academic ability while they're  
18 in your class?  
19 A. What do you mean?  
20 Q. Do you form opinions about your  
21 students as to whether they're, you know, good  
22 students, not so good students? Just in your  
23 mind do you do that?  
24 A. I can judge someone's comments in

26

1 class and whether they're pertinent. I don't  
2 want to prejudge a student because sometimes  
3 students who make good comments write bad  
4 papers; sometimes students who make bad comments  
5 write good papers. I've learned not to judge on  
6 first impressions.

7 Q. In other words, you would not judge a  
8 student until they actually turned in a paper?  
9 A. Yes. I would not judge a student at  
10 all. I would judge the work the student  
11 submits.

12 Q. That's what I meant.  
13 And when are they supposed to turn in  
14 that paper?

15 A. There are scheduled deadlines.  
16 Q. Scheduled deadlines, can you  
17 elaborate?

18 A. The syllabus specifies dates for  
19 turning in papers.

20 Q. Would they be at the beginning, in the  
21 middle, at the end, or how would they work?  
22 A. It depends on the class. In this  
23 course, the first paper is due roughly in the  
24 middle, and the second paper is due at the end.

27

1 Q. So the first paper of the two papers  
2 which are the requisite is due in the middle,  
3 and the second paper is due at the end; am I  
4 correct?  
5 A. Yes.  
6 Q. So once you receive the first paper in

7 the middle, you would know what kind of a  
8 student this student is, more or less?

9 MR. ELSWIT: Objection.

10 Q. Once you receive the first paper in  
11 the middle, in the middle of the course period,  
12 do you form an opinion as to what kind of a  
13 student this student is academically?

14 A. I only grade the paper.

15 Q. You don't form any opinion about the  
16 student?

17 A. There are too many reasons why  
18 students could do well or poorly on one paper,  
19 so it doesn't necessarily reflect the student.

20 Q. Do you form any opinion as to the  
21 academic ability of the student after the second  
22 paper?

23 A. I grade the course on the basis of the  
24 papers.

28

1 Q. Professor Mariner, are you saying that  
2 you will not form any opinion about your student  
3 regardless of how they perform in your class and  
4 on their papers?

5 A. Of the student personally, no.

6 Q. No. I meant consistently referring to  
7 the student's academic abilities.

8 A. I grade them on what they do in my  
9 class. I'm not sure what you're asking me.

10 Q. I'm just asking you if you have any  
11 opinion about the student after the student  
12 performs in your class.

13 MR. ELSWIT: Ben, you've asked this in  
14 every conceivable way. And Professor Mariner  
15 has indicated that she judges the student's  
16 work, both written and oral. I'm not sure how  
17 much more you are going to get out of this. The  
18 answer has been consistent every time it's been  
19 asked.

20 Q. Do you recall what the paper, the  
21 first paper was in the class of 2003 where Layla  
22 Kiani was present?

23 A. The assignment?

24 Q. The first assignment.

29

1 A. I believe it was to analyze one of  
2 several possible provisions of a proposed  
3 federal statute and to analyze it in some  
4 detail.

5 MR. TARIRI: Can we go off the record  
6 for one second, please.

7 (Discussion off the record)

8 MR. TARIRI: Back on. Could you mark  
9 this as Plaintiff's Exhibit 1.

10 (Exhibit 1 marked  
11 for identification)

12 MR. ELSWIT: Ben, there are some  
13 handwritten notes, the word "typo" appears twice  
14 on the first page of Mariner Exhibit 1.

15 MR. TARIRI: That's correct.

16 MR. ELSWIT: Are those your notes?

17 MR. TARIRI: We can cross those out.

18 Can I have those back, and I can cross them out  
19 and give them back to you.

20 MR. ELSWIT: We can cross them out. I  
21 want this on the record. I just want the record  
22 to reflect that Exhibit 1 has some handwritten  
23 notations. The word "typo" appears twice on the  
24 first page. And these handwritten notations do

30

1 not appear in the original document that has  
2 been marked as Exhibit 1. That's all.

3 MR. TARIRI: Thank you. There were  
4 some other handwritten notes that we actually  
5 did white out, but this one somehow got missed.

6 BY MR. TARIRI:

7 Q. Professor Mariner, could you examine  
8 that document, Exhibit 1, please, and let me  
9 know when you're done.

10 (Pause)

11 Q. You're not required to read every  
12 line, just to get a generalized idea.

13 MR. ELSWIT: But you can if you want  
14 to.

15 Q. You are welcome to.

16 (Pause)

17 Q. Professor Mariner, Exhibit 1 is an  
18 excerpt from the Judicial Discipline Committee  
19 charges that were brought against Layla Kiani.  
20 Do you recognize that page? Have you seen that

21 page before?

22 A. Actually, this is the first time I've  
23 seen it.

24 Q. If you look towards the top of the

31

1 page where it says Count One, in the third line,  
2 can you read that? Or in the vicinity of the  
3 third line, can you read the title of the paper?

4 A. This (indicating)?

5 Q. Yes, the underlined title.

6 A. External Independent Review of Managed  
7 Care Organization Decision, colon, Better At  
8 State Level.

9 Q. Do you recognize this title?

10 A. I believe that's the title of a paper  
11 she submitted.

12 Q. Is that the first paper that she  
13 submitted?

14 A. No. That's the second paper, I think.

15 Q. I should have stayed with what I had  
16 before. Can you please go to the second page of  
17 Exhibit 1 and read the underlined title?

18 A. Disclosure of Information to Patients,  
19 colon, Better At the Federal Level.

20 Q. Do you recognize this title?

21 A. I think that was the title of her  
22 first paper.

23 Q. About when in the semester did you ask  
24 the students to write this paper, what month,

32

1 what day maybe?

2 A. The requirement is in the syllabus  
3 which they get before the class begins. And the  
4 due date and description is in the syllabus, so  
5 they have that before the class starts.

6 Q. But you were teaching that class?

7 A. Yes.

8 Q. And would you know about what period  
9 they were supposed to turn this paper in?

10 A. The first paper is usually due about  
11 halfway through the course. I'd have to look at  
12 the syllabus to get the exact date. It  
13 sometimes depends on holidays and topics, what  
14 that specific class is.

15 Q. I understand. I'm not trying to pin  
16 you down on a date. I'm just interested --  
17 A. You could look it up.  
18 Q. I just thought where you taught this  
19 course for so many years you would know more or  
20 less was it in the month of March, was it --  
21 MR. ELSWIT: The witness has already  
22 testified that more or less it was the middle of  
23 the class, middle of the semester.  
24 Q. When does the class begin?

33

1 A. In January.  
2 Q. Is it towards the beginning of  
3 January, end of January?  
4 A. Depending on the school class  
5 schedule, I do whatever they schedule me to do.  
6 Q. Would it be fair to say that you have  
7 a term paper in the middle of the course and one  
8 at the end of the course because you would like  
9 to gauge the students to see how they would do  
10 in the middle of the course?  
11 A. I give them two papers on different  
12 topics to assess their comprehension of  
13 different concepts covered in the course.  
14 Q. What's the purpose of leaving that  
15 gap, giving them that gap to finish one paper?  
16 What's the purpose of that?  
17 A. So that we could cover the material  
18 that they need to know to write the second  
19 paper.  
20 Q. In your current class, have the  
21 students already turned in their first paper?  
22 A. Yes.  
23 Q. And have they been graded?  
24 A. Yes.

34

1 Q. Do you know about when they were  
2 graded?  
3 A. In the middle of the class. Well, a  
4 week or two after the middle of the class.  
5 Q. Do you recall how Ms. Kiani did on her  
6 first paper?  
7 A. Yes.  
8 Q. How did she do?

9 A. Not very well.  
10 Q. What do you mean by that?  
11 A. I gave her a C minus.  
12 Q. How did you determine that based upon  
13 what standard you used to grade her?  
14 A. The same as I base it on all my  
15 students: The quality of the legal analysis and  
16 responsiveness to the assignment.  
17 Q. Is it ever based on performance in  
18 class?  
19 A. No. That's separate.  
20 Q. So performance in class has no bearing  
21 on the student's grade?  
22 A. Not on the grade for the paper.  
23 Q. For which paper, the first paper or  
24 the second paper?

35

1 A. Either.  
2 Q. If a student does very well on both  
3 the first and second paper, would the student  
4 receive a very good grade?  
5 A. Probably.  
6 Q. If the student received an A on both  
7 papers, would he or she receive an A on his or  
8 her final grade?  
9 A. Probably.  
10 Q. So would it be fair to say that that  
11 performance in class does not have a bearing?  
12 A. It can improve your grade.  
13 Q. But if you do poorly on the papers and  
14 you do well in class, your grade will still be  
15 low because you did poorly on your paper?  
16 A. It might be better than if you just  
17 had the papers.  
18 Q. Do you recall whether she had to cite  
19 some authorities that she used on her first  
20 paper?  
21 A. I require students to cite anything  
22 they use as authority. That's standard legal  
23 writing.  
24 Q. Looking at the second page of

36

1 Exhibit 1, do you recall any of these  
2 authorities and whether they were cited?

3 A. Specifically? Not without looking at  
4 the paper again.

5 Q. I'm just asking you whether that's  
6 part of the requirement, that the students have  
7 to cite authorities?

8 MR. ELSWIT: Asked and answered.

9 Q. On her first paper, did Ms. Kiani cite  
10 any authorities -- actually, did she cite any  
11 document, any publication that was published by  
12 you, any article that was published by you?

13 A. I don't remember.

14 Q. Did she do that on her second paper?

15 A. Yes, she did.

16 Q. On her first paper, did you see any  
17 lack of citation or improper citation?

18 A. Yes.

19 Q. Can you elaborate, please?

20 (Pause)

21 Q. Again, I'm not looking for specifics.

22 A. Later I recognized that there were  
23 parts of the paper that were taken from other  
24 published articles without attribution.

1 Q. What do you mean by later?

2 A. I didn't recognize it when I first  
3 graded the paper.

4 Q. When you say lack of attribution, what  
5 do you mean by that?

6 A. There were lines and paragraphs copied  
7 from other articles.

8 Q. Were they referred to, or were they  
9 simply just copied without any reference?

10 A. They were copied without any  
11 indication that they were quotations from the  
12 article.

13 Q. Did she use any reference such as,  
14 According to, Based on?

15 A. She may have.

16 Q. But that wasn't acceptable to you?

17 A. I don't think it's acceptable to  
18 anyone.

19 Q. So she did use the terms According to  
20 and Based on?

21 A. I'd have to --

22 MR. ELSWIT: Objection. That's not

23 what the witness said. The witness said she may  
24 have.

38

1 MR. TARIRI: I'm asking her the same  
2 question.

3 MR. ELSWIT: Well, then, you've asked  
4 her the question already. If you have the  
5 paper, why don't you show it to her.

6 MR. TARIRI: No. There's no need for  
7 that.

8 MR. ELSWIT: Then the answer stands.  
9 BY MR. TARIRI:

10 Q. You testified that later you found out  
11 that there was improper citation and lack of  
12 attribution; is that correct?

13 A. I looked at the paper again.

14 Q. When did you do that?

15 A. After I looked at her second paper.

16 Q. About when was that?

17 A. After the end of the course when the  
18 papers were submitted, when the last papers were  
19 submitted.

20 Q. This is before the grades were due?

21 A. Yes.

22 Q. Had you talked to anyone else about  
23 this, about the lack of proper citation at that  
24 point?

39

1 A. When I was grading the paper, no.

2 Q. When you were grading the second  
3 paper?

4 A. When I was grading the second paper,  
5 no. I was just grading the second paper.

6 Q. Were you told by anyone else to do  
7 anything, to look at the first paper again?

8 A. Not then. At first I graded that  
9 second paper and discovered problems.

10 Q. So if you would, please, if you could  
11 just take us back to the process of grading your  
12 second paper.

13 A. Mm-hmm.

14 Q. How do you do it? How did you do it?

15 A. The same way I graded the first paper.

16 Q. Which is how?

17 A. As I said, I believe on the basis of  
18 the quality of the legal analysis and the  
19 responsiveness of the assignment.  
20 Q. Do you cross-check to see if citations  
21 are correct as you read the paper?  
22 A. If citations are correct?  
23 Q. Right.  
24 A. What do you mean by cross-check?

40

1 Q. Do you actually check the authority to  
2 see if the citation is the exact quotation from  
3 that authority and whether it was placed in  
4 block or quotation marks?  
5 A. Sometimes.  
6 Q. When do you do that?  
7 A. When it appears to be not someone's  
8 original writing.  
9 Q. How do you determine that?  
10 A. When you've read as many papers as I  
11 have, you can get a sense.  
12 Q. Was Ms. Kiani a good writer?  
13 A. Well, it's hard to say since much of  
14 the paper does not appear to be her writing.  
15 Q. When you were grading her second  
16 paper, were you looking for citations?  
17 A. No, not particularly. That was not  
18 the first focus of grading.  
19 Q. No. But as part of your grading, you  
20 would look to see if the citations are proper.  
21 Would that be a fair statement?  
22 A. What do you mean by proper?  
23 Q. Proper that it was attributed to the  
24 correct authority and it was done correctly

41

1 procedurally, technically?  
2 A. Yes. I look to see if there is a  
3 reference for any statement of authority.  
4 Q. Would you recognize works of others if  
5 they looked familiar to you?  
6 A. Sometimes.  
7 Q. If you could look back to the first  
8 page of Exhibit 1.  
9 A. Yes.  
10 Q. The sixth line from the bottom?

11 A. From the bottom?  
12 Q. Yes.  
13 A. Yes.  
14 Q. Actually, I'm sorry, the fifth line  
15 from the bottom.  
16 A. Yes.  
17 Q. Can you read that line, please, the  
18 fifth line from the bottom?  
19 A. Wendy Mariner, Independent External  
20 Review of Health Maintenance Organizations'  
21 Medical Necessity Decisions. That's more than  
22 one line.  
23 Q. Is that an article that you wrote?  
24 A. Yes.

42

1 Q. And you wrote that in the New England  
2 Journal of Medicine?  
3 A. Yes. It was published in the New  
4 England Journal of Medicine.  
5 Q. And it was published in the year 2002?  
6 A. I believe so. I would want to check  
7 it to make certain. It sounds right.  
8 Q. Do you recognize this article as you  
9 see it?  
10 A. Yes. I should recognize the article  
11 if I see it.  
12 Q. Do you recognize your own writing?  
13 A. Usually.  
14 Q. This was one of the improper citations  
15 that the charges were brought for; am I correct?  
16 A. It appears to be one of many.  
17 Q. Exactly. Would it be fair to say that  
18 you saw your own work not being cited correctly?  
19 A. I saw my own work as part of the text  
20 of the paper. I recognized that.  
21 Q. What did you do when you recognized  
22 that?  
23 A. I looked carefully at the rest of the  
24 text in the paper.

43

1 Q. And what did you find?  
2 A. I found unfortunately that a great  
3 deal of the text in the paper was from other  
4 articles.

5 Q. And did you form an opinion at this  
6 point?

7 A. About what?

8 Q. About the paper and the author of the  
9 paper.

10 A. I thought the paper was not original.

11 Q. Did you think that the paper was  
12 plagiarized?

13 A. Yes.

14 Q. So you believed that the paper was a  
15 plagiarized document?

16 A. I believed that there were lots of  
17 instances of plagiarizing other work.

18 Q. So you believed that it was plagiarism  
19 that had occurred?

20 MR. ELSWIT: Asked and answered.

21 Q. Did you believe that Ms. Kiani had  
22 plagiarized?

23 MR. ELSWIT: Asked and answered.

24 MR. TARIRI: I haven't asked that

44

1 question.

2 MR. ELSWIT: You have. But you can  
3 answer again.

4 A. Well, she submitted the paper. It was  
5 her paper apparently, so it would have been her  
6 doing.

7 Q. Her doing of what?

8 A. What I just explained.

9 Q. Could you just repeat it again because  
10 I'm not clear?

11 MR. ELSWIT: Ben, the witness has  
12 already said that the paper was not original and  
13 was plagiarized. I'm not sure what more you  
14 want to get out of this.

15 Q. What did you do when you found out  
16 that the paper was plagiarized?

17 A. When I read the paper, I called the  
18 law school to see what process there might be,  
19 what should be done about something like this.

20 Q. Who did you talk to?

21 A. I don't remember who I spoke to, but  
22 it was in the Dean's Office.

23 Q. Did you call that same day?

24 A. Probably, I'm not sure.

45

1 Q. Same day, next day?  
2 A. Soon.  
3 Q. But it was within a reasonable time?  
4 A. Yes, as soon as I finished reviewing  
5 the paper.  
6 Q. This was before submitting the grades,  
7 before the grades were due?  
8 A. Yes.  
9 Q. When you said you believed the paper  
10 was plagiarized, was it based on improper  
11 citations concerning the article that you wrote  
12 or other articles?  
13 A. Both.  
14 Q. Which one became salient first?  
15 A. Which one what?  
16 MR. ELSWIT: Do mean what  
17 Professor Mariner recognized first?  
18 MR. TARIRI: First.  
19 MR. ELSWIT: In other words, when  
20 Professor Mariner read the paper, what did she  
21 recognize first, her own work or the work of  
22 others?  
23 MR. TARIRI: Exactly.  
24 Q. What prompted you to suspect

46

1 plagiarism?  
2 A. Well, the writing style changed from  
3 paragraph to paragraph, and then I recognized my  
4 own writing in the text of the paper, and then I  
5 looked at others.  
6 Q. So you recognized your work first?  
7 A. Before some of the others.  
8 Q. What happened next after you called  
9 the Dean's Office?  
10 A. They said I should talk to the dean,  
11 who was out of town.  
12 Q. So what did you do?  
13 A. At the office's suggestion I e-mailed  
14 the dean and said I have a concern, what should  
15 we do.  
16 Q. Then what did you do?  
17 A. I think the dean suggested or said  
18 there is a process for academic evaluation, and

19 I should deliver the papers to the responsible  
20 assistant deans. I'm sorry, I don't know the  
21 correct term or title.

22 Q. Assistant dean or associate dean?  
23 A. Yes, whoever is responsible for this  
24 sort of thing.

47

1 Q. What did you do then? Did you talk to  
2 anybody else?

3 A. I believe it was Ryckman that I was  
4 supposed to deliver it to, so I delivered the  
5 paper to Professor Ryckman.

6 Q. Did you do that physically?

7 A. Yes.

8 Q. Did you talk to Professor Ryckman?

9 A. Yes.

10 Q. Who else did you talk to?

11 A. That's all. That's all I remember.

12 Q. Did you talk to other professors?

13 MR. ELSWIT: When?

14 Q. Concerning this particular period that  
15 you e-mailed Dean Cass, then you were told to  
16 talk to one of the associate deans, and then you  
17 took the paper to Professor Ryckman?

18 A. Yes.

19 Q. During this period, did you talk to  
20 any other professors?

21 A. No.

22 Q. Did you talk to Assistant Dean Chris  
23 Marx?

24 A. No.

48

1 Q. Do you know Assistant Dean Chris Marx?

2 A. Yes.

3 Q. How do you know her?

4 A. She's an assistant dean, and she is  
5 responsible for dual degree programs, and I'm a  
6 coordinator for the J.D./MPH dual degree  
7 program, so we communicate on requirements for  
8 the dual degree.

9 Q. How long have you known her?

10 A. I don't know. Quite a few years,  
11 several years.

12 Q. Are you close with her?

13 A. No.  
14 Q. Do you socialize with her?  
15 A. No.  
16 Q. Do you go to meetings with her in the  
17 school?  
18 A. Yes. The dual degree program has a  
19 meeting every fall, which she and I both attend.  
20 Q. Who else is involved in the dual  
21 degree program from the school?  
22 A. As far as I know, she's the only one  
23 responsible directly at the School of Law.  
24 Q. So what happened when you took the

49

1 papers -- both papers, right?  
2 A. No.  
3 Q. Just the second paper?  
4 A. Yes.  
5 Q. The second paper. What happened when  
6 you took the second paper to Professor Ryckman?  
7 What did you do with the first paper?  
8 A. Professor Ryckman suggested that I  
9 should look at that again, and I did.  
10 Q. What did you do once you looked at the  
11 first paper?  
12 A. I found the same kind of copying of  
13 text and language from other articles.  
14 Q. Were you surprised that you found what  
15 you just referred to as lack of attribution  
16 these papers?  
17 A. I'm not following what you mean.  
18 Q. Were you surprised by what you saw in  
19 these papers? Were you surprised?  
20 A. I'm always surprised and disappointed  
21 if someone -- yes.  
22 Q. Were you disappointed as well?  
23 A. I'm always disappointed if my students  
24 don't do well.

50

1 Q. Did you call Ms. Kiani to tell her  
2 that?  
3 A. No.  
4 Q. Why not?  
5 A. Professor Ryckman said that there is a  
6 process to handle it, and I should let that

7 process go forward without doing anything  
8 further myself.

9 Q. Did you understand what that process  
10 was going to be?

11 A. I wasn't sure. He described it  
12 generally. It was new to me.

13 Q. So I take it you haven't been involved  
14 in other cases involving students and  
15 plagiarism?

16 A. At the law school?

17 Q. At the law school.

18 A. No.

19 Q. Did you know that the end result may  
20 be that she would get expelled?

21 A. No.

22 Q. Did you think that? Did you think  
23 that she might get expelled?

24 A. No. I didn't know what -- there could

51

1 be any number of possibilities, I presume, in an  
2 academic process.

3 Q. Did you know that you still had the  
4 right and the ability to contact Ms. Kiani to  
5 just find out?

6 MR. ELSWIT: Objection. Go ahead.

7 You can answer.

8 A. It just didn't seem -- why would I  
9 contact her at that point?

10 Q. To find out -- this was your student.

11 To find out what happened. You already had the  
12 papers, so she wasn't going to change anything.  
13 Just to find out?

14 MR. ELSWIT: There's no question. You  
15 don't have to respond.

16 Q. Did you ever contact her?

17 A. After the class was over?

18 Q. Even before the class. Did you ever  
19 contact her individually as a student? Not as a  
20 group. But as an individual student, did you  
21 ever contact her?

22 A. I may have responded to some e-mails.  
23 I e-mail back and forth with students.

24 Q. But did you on your own volition, did

52

1 you ever contact her to talk to her?  
2 A. No. I prefer to --  
3 MR. ELSWIT: Your answer is no.  
4 Q. Did you ever ask her how she was doing  
5 in class?  
6 A. I ask everybody in the beginning of  
7 class how they're doing.  
8 Q. I mean specifically did you ask her  
9 how she was doing?  
10 A. I may have. I often ask students, How  
11 are you doing, is everything okay.  
12 Q. Were you ever curious how she was  
13 doing considering her disability?  
14 A. I don't presume.  
15 Q. I'm not asking you to presume. I'm  
16 just asking you if you -- you were her  
17 professor. You weren't somebody off the street.  
18 Did you ever ask her or did you ever wonder how  
19 she was managing?  
20 A. No more than any student. Every  
21 student...  
22 Q. What did you do after you looked at  
23 the first paper?  
24 A. I'm sorry. I don't understand.

53

1 Q. What did you do once you looked at  
2 the first paper which you testified  
3 Professor Ryckman suggested for you to look at?  
4 What did you do once you found what you  
5 considered improper citation?  
6 A. I didn't say I considered it improper  
7 citation.  
8 Q. I'm sorry. What did you say?  
9 A. I don't know. That's what you said.  
10 Q. I'm asking you questions, so you  
11 should tell me what you thought.  
12 A. You're asking me what I did --  
13 Q. What did you do once you examined the  
14 first paper?  
15 A. The second time after the end of the  
16 course?  
17 Q. Subsequent.  
18 A. I examined the paper and found new  
19 problems and advised Ryckman and sent that paper  
20 over as well.

21 Q. And this is still before the grades  
22 were due?  
23 A. I believe so.  
24 Q. So at this point both papers were with

54

1 Professor Ryckman? This was before the grades  
2 were due?  
3 A. I can't be certain about the dates,  
4 but I believe so.  
5 Q. Then what did you do?  
6 A. I waited.  
7 Q. Did you grade it?  
8 A. I beg your pardon?  
9 Q. Did you grade her?  
10 A. Yes.  
11 Q. And what was that grade?  
12 A. I initially submitted a D.  
13 Q. I'm asking you what was the grade that  
14 you graded her as in the spring of 2003?  
15 A. D.  
16 Q. At this point you knew that she had  
17 plagiarized?  
18 A. I believed she had plagiarized.  
19 Q. Did you talk to anyone else after you  
20 graded her paper?  
21 A. Did I talk to anyone else?  
22 MR. TARIRI: Could you strike that,  
23 please.  
24 Q. Did you talk to anyone else regarding

55

1 this matter after you graded the paper, graded  
2 her paper in the spring of 2003?  
3 A. Probably, yes.  
4 Q. Who did you talk to?  
5 A. I think I spoke to Professor Ryckman  
6 who told me that there was a proceeding, in  
7 fact, going on, and I might hear more in the  
8 future. And at some point someone in a  
9 committee -- I apologize, I don't recall the  
10 proper name of the committee -- called to say  
11 there would be a hearing.  
12 Q. Do you know what prompted that, what  
13 you called the proceeding?  
14 A. The submission of the papers, I'm

15 told.

16 Q. To you? Submission of the papers to  
17 you?

18 A. I guess...

19 Q. I'm asking you do you know what  
20 initiated the proceedings?

21 A. I think Professor Ryckman said they  
22 would look at what I had submitted to them and  
23 decide whether it would be appropriate to pursue  
24 it with some committee evaluation, and they did

56

1 that.

2 Q. So the proceedings began, were  
3 actually convened due to your notification?

4 MR. ELSWIT: No. I object. The  
5 witness has testified about what she did, what  
6 she heard and what she knows. You can't --  
7 well, you can infer whatever you want. But you  
8 can't ask her to testify about what other people  
9 did unless she has specific knowledge that the  
10 committee was convened because of something that  
11 Professor Mariner did.

12 Q. I'm asking you whether you knew why  
13 the committee was convened? What prompted it?

14 A. I know they said they were going to  
15 decide whether or not to have the committee, and  
16 you can draw your own conclusions about why.

17 Q. Would it be fair to say that it was  
18 because of your papers?

19 MR. ELSWIT: Objection.

20 A. I don't know.

21 Q. You never asked?

22 A. No.

23 Q. Were you curious as to what they were  
24 planning on doing with her, with Ms. Kiani?

57

1 A. Not curious.

2 Q. Did you want to know?

3 A. I would assume that they were going to  
4 tell me as soon as anything relevant to me  
5 happened.

6 Q. Did you ever talk to Professor Kull  
7 about this matter?

8 A. What matter?

9 Q. The papers, the so-called, quote,  
10 plagiarism.

11 MR. ELSWIT: Objection.

12 A. I think so, yes.

13 Q. When did you talk to him?

14 A. I don't remember. Much later.

15 Q. Much later than what, and when?

16 A. Much later than the spring, maybe in  
17 the summer. To be honest with you, I don't  
18 remember.

19 Q. What did you talk about?

20 A. He said he had a similar experience.

21 Q. Did you ask him what that experience  
22 was?

23 A. He told me he had a paper that he was  
24 concerned about, yes, and I wondered if there

58

1 was any procedure. But then we knew.

2 Q. Did he tell you what he did once he  
3 had what you called a similar experience?

4 A. He may have. He may have reported it  
5 also.

6 Q. Did he tell you whether a panel was  
7 convened?

8 A. I don't really remember.

9 Q. Did he tell you what the outcome of  
10 that reporting was?

11 A. I don't remember.

12 Q. Who else did you talk to about this  
13 matter between the time that you gave the grade  
14 and September 12, 2003?

15 A. I think the chair of the committee  
16 called me to say that I might be called to the  
17 hearing and to save the date on my calendar,  
18 which I did.

19 Q. And were you, in fact, called?

20 A. No.

21 Q. Were you told why you weren't called?

22 A. No.

23 Q. You were happy that you weren't  
24 called.

59

1 MR. ELSWIT: Objection.

2 Q. Who else did you talk with?

3 A. Mr. Elswit.  
4 Q. Who else?  
5 A. That's all, as far as I know.  
6 Q. So just to recount, you spoke to the  
7 chair of the committee, you spoke to  
8 Professor Ryckman?  
9 A. Yes.  
10 Q. And you spoke to Assistant Dean Marx?  
11 A. No.  
12 Q. You never talked to Assistant Dean  
13 Marx about this?  
14 A. No.  
15 Q. You spoke to Professor Kull?  
16 A. Briefly.  
17 Q. Professor Mariner, when you were  
18 giving the grade, on what basis did you give  
19 Ms. Kiani a grade of D?  
20 A. I guess I was being generous.  
21 Q. I'm asking you on what academic basis  
22 did you -- was the paper that good to receive a  
23 D?  
24 A. No. I credited her with class

60

1 participation, and I wanted to wait to see if  
2 there were going to be committee process, if  
3 that would confirm my concerns about plagiarism  
4 apart from problems with originality; and if so,  
5 I would have an opportunity to change the grade  
6 then.

7 Q. Why did you need confirmation  
8 regarding your own work? You already knew that  
9 your own work was improperly cited.

10 A. I guess I just wanted to be as  
11 generous as I could with her.

12 Q. Professor Mariner, did you talk to  
13 anyone regarding -- in your tenureship at BU,  
14 have you ever talked to anyone at the school  
15 regarding handicapped students?

16 MR. ELSWIT: Objection. Would you  
17 clarify the question, please?

18 Q. Have you ever talked to anyone  
19 regarding accommodations for handicapped  
20 students?

21 A. At the law school?

22 Q. At the school, not just the law

23 school.

24 A. Not often. But I sometimes receive

61

1 information from the disabilities office at the  
2 University for accommodation for students in  
3 other classes, yes.

4 Q. What sort of accommodations? What  
5 sort of requests for accommodations do you  
6 receive?

7 A. I've received requests for extra time  
8 to take an examination, to take an examination  
9 in a private room, to take an examination on  
10 computer instead of handwriting.

11 Q. Did you ever receive a request for a  
12 stenographer?

13 A. I don't recall one. Actually, that  
14 would not come to me.

15 Q. Did you ever see a stenographer in  
16 your class?

17 A. I think I have seen a stenographer for  
18 a blind student.

19 Q. Any other stenographers?

20 A. It's possible. I sometimes teach  
21 large lecture courses where it's difficult to  
22 see.

23 Q. Did you ever have any students in your  
24 class, not just in the law school, who you

62

1 believe needed accommodations?

2 A. I'm not sure I could judge that.

3 Q. Regardless of whether they received it  
4 or not, but did you have a student in your class  
5 whose hands had dexterity issues who couldn't  
6 write?

7 A. I don't know about students with  
8 hands. There are certainly students at the  
9 School of Public Health in wheelchairs.

10 Q. But do you have any students whose  
11 hands were not -- who weren't able to use their  
12 hands?

13 A. I don't know of any. It's possible  
14 that they were in my lecture classes and I  
15 wasn't aware of it because they already had  
16 someone with them.

17 Q. Is it generally the school's policy to  
18 inform you if someone is coming to your class  
19 other than the student?

20 A. No, not in a big lecture class. Not  
21 necessarily. I'm informed of things I need to  
22 do.

23 Q. Are you not supposed to be aware of  
24 who is in a class?

63

1 A. When there are 100 students in the  
2 class, no, not every day.

3 Q. When did you come in contact with this  
4 issue again after the spring of 2003?

5 MR. ELSWIT: What issue?

6 MR. TARIRI: The issue of the two  
7 papers.

8 MR. ELSWIT: Could you rephrase that  
9 question, please?

10 Q. When did you become involved again in  
11 the issue of the papers in any manner after the  
12 spring of 2003?

13 A. I really wasn't involved. I was  
14 notified that there would, in fact, be a  
15 hearing.

16 Q. Well, the hearing was convened, and  
17 there was a decision?

18 A. Yes.

19 Q. Did they notify you about the  
20 decision?

21 A. I didn't get notification of the  
22 decision until very late.

23 Q. When did you receive notification?

24 A. I don't recall, but it was probably in

64

1 December.

2 Q. Was it December of 2003?

3 A. Probably. It was the same year, I  
4 think.

5 Q. How were you notified?

6 A. I think I got a letter.

7 (Pause)

8 A. I don't remember.

9 Q. But you were notified?

10 A. Oh, yes. I think I was notified

11 because the -- I'm not certain of this. The  
12 only thing that would have prompted me to  
13 recognize it would be there was a request for an  
14 opportunity to change grades.

15 Q. Which office did that come from?  
16 A. Probably the Registrar's.  
17 Q. Would it be an e-mail?  
18 A. I don't remember.  
19 Q. How was it delivered?  
20 A. Probably in a form letter. I  
21 sometimes get mail late from the School of Law  
22 because it comes to the School of Public Health  
23 and is collected, and so sometimes it comes to  
24 me a little late, very late.

65

1 Q. Do you have that letter?  
2 A. I don't know.  
3 MR. ELSWIT: Mr. Tariri, the letter  
4 was produced during discovery. You have a copy  
5 of that letter.

6 MR. TARIRI: I'm asking her if she has  
7 that letter.

8 THE WITNESS: I gave everything to  
9 you.

10 MR. ELSWIT: We'll stipulate that the  
11 letter was produced.

12 BY MR. TARIRI:

13 Q. What did you do when you received that  
14 notification?

15 A. I decided to change the grade.

16 Q. You decided to change the grade?

17 A. Yes.

18 Q. Why did you decide that?

19 A. Because I couldn't justify a higher  
20 grade anymore.

21 Q. And you changed the grade to what?

22 A. F.

23 Q. At that time, were you aware that by  
24 changing the grade, this would have

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1 ramifications, negative ramifications for  
2 Ms. Kiani?  
3 A. I assume all Fs have negative  
4 ramifications.

5 Q. Granted.

6 And what did you think the  
7 ramifications were?

8 A. Specifically, I didn't know.

9 Q. Did you know that the grade of F would  
10 contribute to her GPA being dropped below a 2.0?

11 A. No.

12 Q. Did you know that as a consequence,  
13 she would be dropped from school?

14 A. As a consequence of what?

15 Q. As a consequence of her grade, her GPA  
16 being dropped below 2.0, she would be dropped  
17 from the school for academic deficiency?

18 A. No.

19 Q. Are you familiar with the term  
20 academic deficiency?

21 A. No.

22 Q. Are you familiar with the academic  
23 requirements of the school for a student to be  
24 in good standing?

67

1 A. I know that schools generally have  
2 minimum grade point averages, but I didn't know  
3 the law schools did.

4 Q. So you did not know that 2.0 was the  
5 absolute minimum to stay in law school?

6 A. No. I would think it would be higher.

7 Q. When did you find out?

8 A. After all of this.

9 Q. When did you find out?

10 A. I think when there was a claim by  
11 Ms. Kiani having left the school and having  
12 been -- I don't know what the proper term is.

13 Q. Having been ejected from the school?

14 MR. ELSWIT: Objection to the use of  
15 the word ejected. I think Professor Mariner has  
16 made it pretty clear that she did not know what  
17 the minimum GPA was that was required for a  
18 student to stay in school.

19 Q. Professor Mariner, how do you define  
20 plagiarism in your own mind?

21 A. Is this a theory class?

22 Q. This is not a quiz.

23 A. I could think about it. But in  
24 general, using someone else's work without

1 acknowledgment.

2 Q. Does it require the person to intend  
3 to conceal?

4 A. Intent? I don't really think about  
5 intent.

6 Q. It intent required?

7 A. I don't think about intent.

8 Q. So if you use someone else's work  
9 without proper citation, that would be  
10 plagiarism?

11 A. It could be.

12 Q. And that's your definition?

13 A. I think I have tried to explain what I  
14 would characterize as plagiarism.

15 Q. Do you believe that Ms. Kiani intended  
16 to plagiarize?

17 MR. ELSWIT: Objection.

18 Professor Mariner has already testified that in  
19 her view, the plaintiff plagiarized. And from  
20 that point on, the definition of plagiarism is  
21 dependent not on Professor Mariner's views but  
22 on the law school's views. And her perception  
23 of plaintiff's intent has no bearing on this  
24 case.

1 MR. TARIRI: I'm not asking her to  
2 define plagiarism anymore. I'm just asking for  
3 her view of her student to let -- I'm just  
4 asking her whether she had an opinion about her  
5 student who was in her class for more than three  
6 months.

7 A. I have no way of knowing what  
8 Ms. Kiani did or didn't intend. All I know is  
9 what she submitted on her paper to me.

10 MR. TARIRI: I have no further  
11 questions. Thank you so much.

12 MR. ELSWIT: No questions. Thank you.  
13 (The deposition was concluded at 12:10 p.m.)

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1 IN RE: Kiani v. Trustees of Boston University  
2 TAKEN: Tuesday, April 26, 2005

3

4 C E R T I F I C A T E

5 I, WENDY K. MARINER, do hereby certify  
that I have read the foregoing transcript of my  
6 testimony, and further certify that it is a true  
and accurate record of my testimony (with the  
7 exception of the corrections listed below):

Page Line Correction

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WENDY K. MARINER

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71

1 CERTIFICATE

2 Commonwealth of Massachusetts

3 Suffolk, ss.

4 I, Toni F. Beckwith, Registered Merit

5 Reporter and Notary Public in and for the

6 Commonwealth of Massachusetts, do hereby certify

7 that WENDY K. MARINER, the witness whose

8 deposition is hereinbefore set forth, was duly

9 sworn by me and that such deposition is a true

10 record of the testimony given by the witness.

11 I further certify that I am neither related

12 to or employed by any of the parties in or

13 counsel to this action, nor am I financially

14 interested in the outcome of this action.

15 In witness whereof, I have hereunto set my

16 hand and seal this 2nd day of May 2005.

17

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18 Notary Public

19 CSR No. 111293

20 My commission expires:

21 February 11, 2011

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